



This Recommended Order and Decision became the Order and Decision of the  
Illinois Human Rights Commission on 10/07/04.

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:	)	
	)	
FRANSHONN C. SALTER,	)	
	)	
	)	
Complainant,	)	
	)	Charge No.: 2002CF0011
and	)	EEOC No.: 21BA12001
	)	ALS No.: 11929
CATHOLIC CHARITIES OF THE	)	
ARCHDIOCESE OF CHICAGO,	)	
	)	
Respondent.	)	

**RECOMMENDED ORDER AND DECISION**

On November 1, 2002, the Illinois Department of Human Rights filed a complaint on behalf of Complainant, Franshonn C. Salter. That complaint alleged that Respondent, Catholic Charities of the Archdiocese of Chicago, discriminated against Complainant on the bases of her race and sex when it failed to promote her.

This matter now comes on to be heard on Respondent's Motion for Summary Decision. Complainant has filed a written response to the motion, and Respondent has filed a written reply to that response. The matter is ready for decision.

**FINDINGS OF FACT**

The following facts were derived from uncontested sections of the pleadings or from uncontested sections of the affidavits and other documentation submitted by the parties. The findings did not require, and were not the result of, credibility

determinations. All evidence was viewed in the light most favorable to Complainant.

1. Respondent, Catholic Charities of the Archdiocese of Chicago, hired Complainant, Franshonn C. Salter, on or about November 1, 2000.

2. Complainant's position was Worker IV - Child Protection Investigator IV with Respondent's Child Protective Services Department.

3. Complainant is a black female.

4. Throughout her tenure with Respondent, Complainant performed her job duties in a satisfactory manner consistent with Respondent's reasonable performance expectations.

5. In the summer of 2001, Rose Marie Brailo was promoted from Program Assistant to Supervisor. Complainant was aware of that promotion.

6. Effective July 2, 2001, Matthew Hunnicutt, Respondent's Director of Child Protective Services, hired Testamarium Kefle for the position of Program Assistant III. Kefle, a black male, replaced Rose Marie Brailo.

7. Kefle heard about the Program Assistant position through Hunnicutt. Hunnicutt also told Olufuminayo Kali, a black female, about the position.

8. Kefle was the only formal applicant for the position.

9. The position of Program Assistant III would have been a promotion for Complainant.

10. In late June of 2001, Brailo and Complainant discussed the open Program Assistant position. Brailo asked Complainant if she was interested in the position. Brailo also offered to tell Hunnicutt that Complainant was interested in the position.

11. Complainant did not apply for the Program Assistant position.

#### CONCLUSIONS OF LAW

1. Complainant is an "aggrieved party" as defined by section 1-103(B) of the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.* (hereinafter "the Act").

2. Respondent is an "employer" as defined by section 2-101(B)(1)(a) of the Act and is subject to the provisions of the Act.

3. Complainant cannot establish a *prima facie* case of race discrimination against her.

4. Complainant cannot establish a *prima facie* case of race discrimination against her.

5. Respondent can articulate a legitimate, non-discriminatory reason for its actions.

6. There is no genuine issue of material fact on the issue of pretext and Respondent is entitled to a recommended order in its favor as a matter of law on all of the claims raised in the complaint.

7. A summary decision in Respondent's favor is appropriate in this case.

## DISCUSSION

This matter is being considered pursuant to Respondent's Motion for Summary Decision. A summary decision is analogous to a summary judgment in the Circuit Court. ***Cano v. Village of Dolton***, 250 Ill. App. 3d 130, 620 N.E.2d 1200 (1st Dist. 1993). Such a motion should be granted when there is no genuine issue of material fact and the moving party is entitled to a recommended order in its favor as a matter of law. ***Strunin and Marshall Field & Co.***, 8 Ill. HRC Rep. 199 (1983). The movant's affidavits should be strictly construed, while those of the opponent should be liberally construed. ***Kolakowski v. Voris***, 76 Ill. App. 3d 453, 395 N.E.2d 6 (1st Dist. 1979). The movant's right to a summary decision must be clear and free from doubt. ***Bennett v. Raag***, 103 Ill. App. 3d 321, 431 N.E.2d 48 (2d Dist. 1982).

Respondent hired Complainant on or about November 1, 2000. Complainant's position was Worker IV - Child Protection Investigator IV with Respondent's Child Protective Services Department. Throughout her tenure with Respondent, Complainant performed her job duties in a satisfactory manner consistent with Respondent's reasonable performance expectations.

In the summer of 2001, Rose Marie Brailo was promoted from Program Assistant to Supervisor. Complainant was aware of that promotion.

In late June of 2001, Brailo and Complainant discussed the open Program Assistant position. Brailo asked Complainant if she

was interested in the position. Brailo also offered to tell Matthew Hunnicutt, Respondent's Director of Child Protective Services, that Complainant was interested in the position. It was Hunnicutt's responsibility to choose the person who would fill the Program Assistant position. Complainant did not take Brailo up on her offer.

The position of Program Assistant III would have been a promotion for Complainant. Despite that fact, Complainant did not apply for the position.

Effective July 2, 2001, Hunnicutt hired Testamarium Kefle for the position of Program Assistant III. Kefle is a black male. Kefle heard about the Program Assistant position through Hunnicutt. Hunnicutt also told Olufuminayo Kali, a black female, about the position. Kefle was the only formal applicant for the position.

After Kefle's appointment, Complainant filed a charge of discrimination against Respondent. Complainant, who is a black female, alleged in her charge that Respondent failed to promote her to Program Assistant because of her race and sex.

The method of proving such allegations is well established. First, Complainant must establish a *prima facie* showing of discrimination. If she does so, Respondent must articulate a legitimate, non-discriminatory reason for its actions. For Complainant to prevail, she must then prove that Respondent's articulated reason is pretextual. **Zaderaka v. Human Rights**

*Commission*, 131 Ill. 2d 172, 545 N.E.2d 684 (1989). See also *Texas Dep't of Community Affairs v. Burdine*, 450 U.S. 251 (1981).

To establish a *prima facie* case of discrimination in a promotion situation, Complainant must establish four elements. She must show 1) that she belongs to a protected class, 2) that she applied for an open position for which she was qualified, 3) that she was not hired for the position, and 4) that the person hired for the position had lesser or similar qualifications and did not belong to Complainant's protected class. *Konkol and The People's Gas Light and Coke Co.*, \_\_\_ Ill. HRC Rep. \_\_\_, (1988CF0122, April 26, 1993)(sex discrimination); *Henson and Board of Commissioners, Cook County, Prison Health Services*, 37 Ill. HRC Rep. 56 (1988)(race discrimination).

Clearly, under the facts in the record, Complainant cannot establish a *prima facie* case. She cannot establish the second element for either her race or her sex claim. She concedes that she did not apply for the Program Assistant position.

Moreover, even viewing the evidence in the light most favorable to her, Complainant cannot establish the fourth element for her race claim. Leaving aside for a moment the question of qualifications for the job, the successful candidate was of the same race as Complainant.

Thus, Complainant cannot establish a *prima facie* case on either of her claims. That fact, however, does not conclude the analysis of the case.

Complainant's failure to establish a *prima facie* case, in and of itself, is not fatal to her claims. In its submissions, Respondent articulated a legitimate, non-discriminatory reason for its actions. Once such a reason is articulated, there is no need for a *prima facie* case. Instead, at that point, the decisive issue in the case becomes whether the articulated reason is pretextual. ***Clyde and Caterpillar, Inc.***, 52 Ill. HRC Rep. 8 (1989), *aff'd sub nom Clyde v. Human Rights Commission*, 206 Ill. App. 3d 283, 564 N.E.2d 265 (4th Dist. 1990).

To justify denial of Respondent's motion, Complainant would have to raise a genuine issue of material fact on the issue of pretext. ***Pettis and McDonald's Corp.***, \_\_\_ Ill. HRC Rep. \_\_\_, (1991CF2143, October 10, 2001.) She failed to meet that burden.

Respondent's briefs argue strenuously that the successful candidate, Kefle, was more qualified for the job than Complainant was. That issue, though, never has to be reached because it is clear that Complainant was not even considered for the job because she had specifically disavowed any interest in it.

Respondent submitted an affidavit from Rose Marie Brailo. As discussed above, according to that affidavit, Brailo asked Complainant twice if she was interested in the Program Assistant position. Both times, Complainant said she was not interested. Complainant tried to attack Brailo's credibility, but did not deny making those statements. Because Complainant did not deny the statements in Brailo's affidavit, those statements stand

unrebutted. See *Koukoulomatis v. Disco Wheels*, 127 Ill. App. 3d 95, 468 N.E.2d 477 (1st Dist. 1984).

Moreover, as also discussed above, Complainant did not make any attempt to apply formally for the position. As a result, Hunnicutt had no reason to consider her for the opening. It is not evidence of discrimination that an employer did not promote an employee to a position in which the employee had denied any interest.

Complainant claims that the open position was not properly posted, but that issue is clearly a red herring. If Complainant had not known about the opening, her argument might have some appeal. In this case, though, she knew about the opening yet still did nothing to apply. As a result, it is of no consequence whether Respondent properly posted notice of the opening.

Finally, even if the successful candidate's qualifications are considered, there is no genuine issue of material fact on the issue of pretext. It is undisputed that Kefle had the educational qualifications and practical experience that Respondent was seeking. Complainant argues that her qualifications were better, but her arguments are based on her personal evaluation of what qualifications were important. She did not prove that her qualifications were the same as the ones Respondent was seeking. She has offered no evidence whatsoever to suggest that Respondent's reason for hiring Kefle was pretextual. Without such evidence, she cannot raise the question



of fact necessary to justify denial of Respondent's motion for summary decision.

RECOMMENDATION

Based upon the foregoing, there are no genuine issues of material fact regarding pretext and Respondent is entitled to a recommended order in its favor as a matter of law. Accordingly, it is recommended that the complaint in this matter be dismissed in its entirety, with prejudice.

HUMAN RIGHTS COMMISSION

BY: \_\_\_\_\_  
MICHAEL J. EVANS  
ADMINISTRATIVE LAW JUDGE  
ADMINISTRATIVE LAW SECTION

ENTERED: September 10, 2003